



September 29, 1999

Mr. Daniel M. Burns
Walsh, Anderson, Brown, Schulze & Aldredge, P.C.
6300 La Calma, Suite 200
Austin, Texas 78768

OR99-2752

Dear Mr. Burns:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128797.

The Riesel Independent School District (the "school district"), which you represent, received a request for documents concerning J.L. Construction, Inc. ("JLC"), the "Dr. James Foster Elementary School" project, and Del Ware and any company in which he has an ownership interest. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed a representative sample of the information at issue.¹

Initially, we note that the requestor seeks the notices, agenda, and minutes of meetings concerning JLC. To the extent that documents concern public meetings, they must be released. For compelling reasons of public policy, these types of documents cannot be withheld from disclosure even if they arguably fall within the scope of one of the exceptions to disclosure found in the Public Information Act. *See* Open Records Decision No. 551 at 2-3 (1990). Furthermore, the Public Information Act's exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989). The minutes of a public meeting are made public by statute and thus cannot be withheld from disclosure pursuant to section 552.103 of the Government Code. Gov't Code § 551.022; Open Records Decision No. 221 (1979). We will consider your arguments against disclosure for the remaining documents at issue.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You have demonstrated that the documents at issue relate to pending litigation to which the school district is a party. *J.L. Construction, Inc. v. Riesel Indep. Sch. Dist.*, No. 99-28894, (170th Dist. Ct., McLennan County, Tex. Sept. 15, 1999). However, information that has either been obtained from or provided to the opposing party in the litigation, through discovery or otherwise, is not excepted from disclosure under section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). The opposing party in the litigation has previously had access to several of the submitted documents. The school district may not withhold any of these documents from disclosure under section 552.103(a). The school district may withhold the remaining documents from disclosure under section 552.103(a). We note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 128797

Encl. Submitted documents

cc: Mr. Jim Sanders
J.L. Construction
P.O. Box 697
Gatesville, Texas 78625-0697
(w/o enclosures)